

U.S. PTO Customer No. 25280

Case #5719

REMARKSThe Examiner's Response to Applicant's Arguments

The Examiner maintains that the independent claims remain extremely broad. Thus, in an effort to move prosecution of this application toward issuance, Applicants have amended independent claims 1, 31, 34 and 37 to reduce the number of compounds included as absorbent particulates and as dispersion stabilizing agents.

Note also that claim 37 now positively recites "aerosol propellant."

35 USC §103 (a) Rejections:

3. Claims 1 – 5, 8 – 12, 14 – 15, 18, 20, 22, 24-25, 27, 31, 34 and 37-38 were rejected under 35 USC §103 (a) as being unpatentable over Trinh et al. (US Patent No. 4,481,126).

Examiner's Arguments

The Examiner submits that Trinh discloses (a) a substantially nonabrasive, liquid car cleaner composition which cleans car surfaces without an external source of water to wash or rinse (Abstract); (b) that the product is a composition of up to 30% polymeric solids, up to 95% liquid carrier and a suspension aid (Abstract); (c) that other optional ingredients such as waxes, fluorosurfactants, anticorrosion agents, antistatic agents, sunscreening agents, inorganic mild abrasives, pigments, perfumes, and preservatives can also be used for added benefit (col. 2, lines 64-68); (d) that the composition comprises organic polymeric solids selected from the group consisting of porous and/or nonporous powdered particles in the particle size range of from 1 micron to about 250 microns (col. 2, lines 37 – 42); (e) that mixtures of water and aliphatic hydrocarbon solvents are used as the liquid carrier; and (f) that both surfactants and thickeners are used as the suspending agent.

The Examiner notes that the reference fails to teach the particle size of calcium carbonate used. However, the Examiner submits that the reference teaches mild inorganic abrasives such as calcium carbonate powder (col. 6, lines 28 – 31) and further teaches the particle sizes of other solids that are present. Thus, the Examiner believes there would be a reasonable expectation of success to modify

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the prior art to arrive at the instantly claimed invention because the prior art suggest a particle size of other solids to be suspended.

The Examiner also notes that the reference fails to teach the specific surfactant of claim 11. However, the Examiner submits that there would be a reasonable expectation of success to modify the prior art to arrive at the instantly claimed invention because the prior art does suggest that any surfactant that is compatible with the system may be used.

The Examiner also notes that the reference fails to teach that the acrylic component disclosed is an acrylic stain resistant agent. However, the Examiner believes that since the reference teaches that acrylic additives may be used, there would be a reasonable expectation of success that material of the same structure will have similar properties.

The Examiner previously asserted that while Applicants argue there is no motivation to remove the silicone component from Trinh's cleaning composition, there is no need to omit silicone for the claims to read on the Trinh reference. Both the claims and the reference are drawn to cleaning compositions, and silicone "does not affect cleaning in any deleterious fashion." Thus, the Examiner contends that the recitation of "consisting essentially of" in claim 1 does not amend around compositions containing silicone.

However, with regard to silicone and in response to Applicants' 1.132 Declaration (submitted October 12, 2006), the Examiner argues that "whether or not the silicone of Trinh compositions affects is deleterious, the criterion is whether or not it would be deleterious for the cleaning of automobiles" (Final Office Action dated June 21, 2007 – page 3).

Applicants' Arguments

In order to establish a *prima facie* case of obviousness, MPEP 2143 states that (a) there must be a motivation or suggestion to combine [or modify] the references, (b) there must be a reasonable expectation of success if the combination or modification is made, and (c) all the claim limitations must be considered. Applicants respectfully submit that (a) – (c) have not been met; and therefore, the instant claims are not obvious in light of the prior art.

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Trinh teaches the use of silicone materials in their cleaning composition to enhance the appearance of car surfaces, improve the ease of application and removal of the cleaner and to make the car surfaces water repellent for added protection (col. 5, line 68 to col. 6, line 4). Trinh specifically exemplifies the use of 4% by weight of silicone in each of Examples I through XVI. Trinh also claims the use of silicone in claims 1 and in claims 31-33. These properties, such as improving ease of application and removal of the cleaner and making the surface water repellent, would similarly be ideal for Applicants' cleaning composition on a textile article. However, Applicants have provided evidence in the 1.132 Declaration (submitted October 12, 2006) that the use of silicone materials, as taught by Trinh, is actually detrimental to the cleaning of textile articles.

Thus, Applicants respectfully submit that there is no motivation provided by the reference for modifying the silicone-containing composition taught by Trinh to arrive at Applicants' claimed invention. Additionally, no reasonable expectation of success is provided that in modifying the composition of Trinh, one of ordinary skill in the art would arrive at Applicants' claimed invention. Further, Trinh does not teach the specific combinations of chemicals suitable for cleaning textile substrates, as currently claimed by Applicants. As such, Applicants respectfully submit that all of the claim limitations have not been considered.

Furthermore, Applicants note that MPEP 2144.04 states that the elimination of an element while retaining its function is an indicia of non-obviousness. Applicants respectfully submit that elimination of silicone from the composition of Trinh, while maintaining its function (i.e. the composition is still easy to apply and remove from the treated surface, etc.) has been achieved by Applicants claimed composition. Accordingly, Applicants respectfully submit that the presently claimed invention is not obvious over the teachings of Trinh. Thus, Applicants respectfully request reconsideration and withdrawal of this rejection.

In addition, Applicant respectfully submits that the rejection fails to establish a *prima facie* showing of obviousness, since the reference teaches away from Applicant's claimed invention. Case law states that "[A] prior art reference may be considered to teach away when 'a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.'" Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH, 1998 WL 117765 at *8 (Fed. Cir. 1998); In re Gurley, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

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Applicants respectfully assert that the teaching by Trinh of silicone-containing compositions and the test results provided by Applicants in the Declaration provide evidence that the Trinh reference actually teaches away from Applicants' claimed invention, since Trinh teaches the use of compounds which deleteriously affect the cleaning ability of Applicants' composition. Thus, Applicants assert that one of ordinary skill in the art would not look to a composition that contains silicone compounds to create a composition ideally suited to clean textile substrates. It simply would not be an obvious choice. As such, in light of the Declaration contents and the claim amendments contained herein, Applicants respectfully submit that this rejection is improper. Reconsideration and withdrawal is earnestly requested.

4. Claims 19 and 20 were rejected under 35 USC §103 (a) as being unpatentable over Trinh et al. (US Patent No. 4,481,126) further in view of Froehlich (US Patent No. 3,910,848) or Brown (US Patent No. 5,514,302).

Claim 19 was cancelled in Applicants' previous Response and Amendment dated September 21, 2007.

Applicants have cancelled claim 20 in the current Response and Amendment.

Thus, Applicants respectfully submit that this rejection is now moot.

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Conclusion:

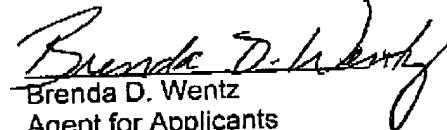
For the reasons set forth above, it is respectfully submitted that claims 1 – 5, 8 – 12, 18, 31, 34, 37 and 39-42 now stand in condition for allowance.

Should any issues remain after consideration of these Remarks and Amendments, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

In the event that there are additional fees associated with the submission of these papers, authorization is hereby provided to withdraw such fees from Deposit Account No. 04-0500.

Respectfully requested,

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